

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JENNIFER UNDERWOOD, on Behalf of
Herself and All Others Similarly Situated,
Plaintiffs,**

v.

**KOHL'S DEPARTMENT STORES, INC.
and CAPITAL ONE, NATIONAL
ASSOCIATION,
Defendants,**

CIVIL ACTION

NO. 15-730

ORDER

AND NOW, this 13th day of November, 2017, upon consideration of Plaintiff Jennifer Underwood's Motion for Class Certification and Memorandum of Law in Support Thereof (ECF Nos. 189 & 191); Defendants Kohl's Department Stores, Inc. and Capital One, National Association's Response in Opposition thereto (ECF No. 194); Plaintiff's Reply in Further Support of Her Motion for Class Certification (ECF No. 196); Defendants' Sur-Reply in Further Opposition to Plaintiff's Motion for Class Certification (ECF No. 198); and Plaintiff's Opposition to Defendants' Sur-Reply (ECF No. 199), **IT IS ORDERED** that the motion for class certification is **GRANTED IN PART AND DENIED IN PART**, and that Plaintiff's proposed class shall be certified as follows:

- (1) The following class is certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure: All persons with a Kohl's Private Label Credit Card who (a) paid \$14.99 a month for PrivacyGuard between February 13, 2012 to October 31, 2013; (b) did not complete the second step of PrivacyGuard enrollment; and (c) opened a Kohl's Private Label Credit Card account before April 1, 2011. Excluded from the class is anyone who received a complete refund of her PrivacyGuard fees levied between February 13, 2012 to October 31, 2013, as well as any employees of either Defendant or Trilegiant. This class is certified only to the extent that class members assert an unjust enrichment claim against Defendants under Delaware law;

- (2) Plaintiff Jennifer Underwood shall serve as the class representative; and
- (3) The law firms of Saltz, Mongeluzzi, Barret & Bendesky, P.C. and McLaughlin & Stern LLP shall serve as class counsel.

IT IS FURTHER ORDERED that the parties are to meet and confer, and submit a proposed form of notice for the Court's approval within fourteen (14) days upon entry of this order so that the best practicable notice under the circumstances may be given to class members. Fed. R. Civ. P. 23(c)(2)(B).

BY THE COURT:

/s/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.